

2002

Indian Law Research in Washington

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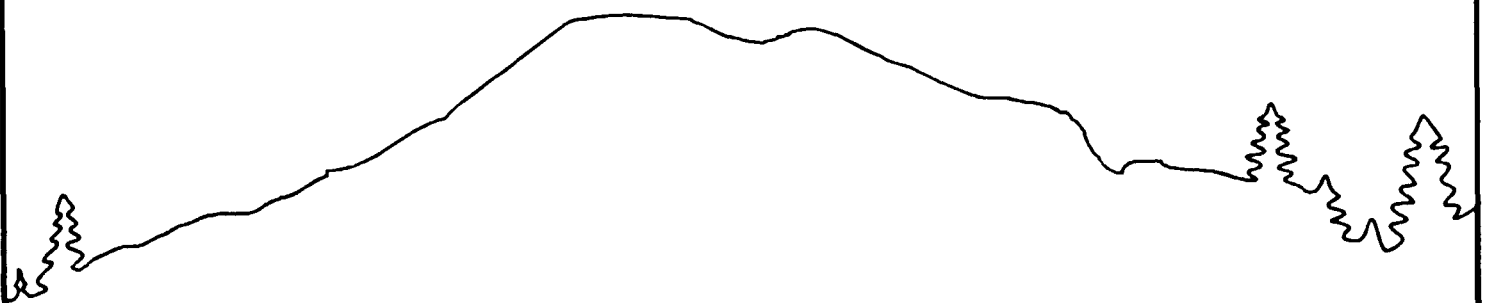
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Washington Legal Researcher's Deskbook 3d



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Introduction

The *Washington Legal Researcher's Deskbook 3d* has been written to assist lawyers, students, librarians, legal assistants, legal secretaries, and members of the public in the complex task of researching legal problems. This book focuses on the law of Washington State and the legal materials that are available to the Washington practitioner. The reader will not find answers to legal questions but rather will find a rich array of information that can help in the process of researching the law.

The importance of legal research certainly cannot be overstated. Lawyers want to give good advice to their clients. If the client's problem is new to the practitioner, chances are good that a review of the legal issues and authority will be necessary. This may plunge the researcher into unfamiliar areas of law.

If it were not enough to want to give good advice, Rule 1.1 of the Washington Rules of Professional Conduct (RPC) requires that a practitioner "shall provide competent representation to a client." This rule requires familiarity with the relevant law through previous knowledge or through conducting adequate research. No Washington State Bar Association ethics opinions interpret this rule regarding the standards for performing competent legal research.

A 1975 California Supreme Court case, *Smith v. Lewis*, 10 Cal.3d 349, 530 P.2d 589 (1975), articulates a standard of care for legal research. The standard requires (1) sufficient research (2) using standard research techniques (3) to obtain readily available authority. The Court found that the defendant lawyer failed to meet this standard of care. Cases

in other jurisdictions have reached a similar result. The Washington Court of Appeals has apparently applied this standard in *Halvorsen v. Ferguson*, 46 Wash. App. 708, 718, 735 P.2d 675, 681 (1986).

A study commissioned by the ABA Section of Legal Education and Admissions to the Bar listed legal research among ten skills necessary for the practice of law. The Task Force identified three specific skills needed for thorough and efficient research:

- 3.1 Knowledge of the Nature of Legal Rules and Institutions;
- 3.2 Knowledge of and Ability to Use the Most Fundamental Tools of Legal Research;
- 3.3 Understanding of the Process of Devising and Implementing a Coherent and Effective Research Design

Task Force on Law Schools and the Profession: Narrowing the Gap, *Legal Education and Professional Development—An Educational Continuum* at 138 ("The MacCrate Report") (1992).

The legal researcher of the twenty-first century cannot rest on the knowledge of legal research tools acquired while in law school or even as recently as two years ago. The computerization of legal information has completely changed the world of legal research and the practice of law. Some recent commentators have even suggested that computerized research is required in order for practitioners to avoid malpractice. See David M. Sandhaus, "Computers Are Required for the Practitioner to Avoid Malpractice," *Wash. St. B. News*, Nov. 1993, at 51; Robert C. Berring, "Technology and the Standard of Care for Legal Research," *Legal Malpractice Rep.*, 1992, at 21. You will find electronic resources noted and discussed throughout the entire *Deskbook*.

The purpose of this *Deskbook* is to provide a broad spectrum of information that would be helpful to the person who must research Washington State law. In the first chapter, Ann Hemmens describes how to use a law library. From using law li-

baries in person to using law libraries without leaving the comfort of your home or office, the tips provided in this chapter will be useful to all legal researchers.

In the second chapter, I review the formats of legal information and outline a strategy to help the legal researcher design a research process or framework. Practical tips for efficient use of legal tools are discussed. If you must research an area of law you know nothing about, the article reprinted in Appendix II will be extremely useful. If taking good notes is your downfall, be sure to read the note-taking article found in Chapter 2, Appendix III. This piece is full of practical hints that can help any researcher create a fine research product.

Chapter 3, written by Mary Whisner, is an excellent review of the most basic and important legal research tools used for researching Washington law. Ms. Whisner reviews secondary sources, statutes, administrative regulations, case law, case-finding tools, attorney general opinions, citator services, and basic citation formats. She includes information about electronic versions of these information tools as well as the printed texts. Every legal researcher should be familiar with the contents of this chapter.

Using one or more of the many excellent handbooks and deskbooks available on Washington law can help the legal researcher quickly and efficiently define the problem and locate the primary sources to answer the question. In Chapter 4, Nancy McMurrer provides annotated descriptions both of broad, multi-topic sources and other, more specific titles listed by subject. This chapter is crucial for the researcher who is not intimately familiar with the wealth of secondary literature available in Washington.

Washington State agencies promulgate a variety of administrative decisions or actions. These are ably discussed in Chapter 5 by Cheryl Rae Nyberg. Pay particular attention to the description of the Administrative Procedure Act and its requirements. Ms. Nyberg discusses each state agency that issues ad-

ministrative determinations and even provides a summary chart of the various sources of agency quasi-judicial actions in order to speed your research.

Never compiled a Washington legislative history? Follow the clear step-by-step directions written by Peggy Roebuck Jarrett in Chapter 6 on legislative history and bill tracking. Clearly our author has had some experience with this awesome task!

Ms. Jarrett shows the novice exactly how to follow the Legislature's process and includes important tips for accomplishing this research chore efficiently and competently. Researching state initiatives can also be problematic; see the tips included by the author.

A completely new chapter on local government law has been researched and written by Mary Ann Hyatt. After an excellent background of the authority and role played by local governments, Ms. Hyatt analyzes the primary and secondary materials for cities, counties, and special districts.

Historical and archival sources of legal information are new in this edition of the *Deskbook*. In Chapter 8, Cheryl Nyberg and Ann Hemmens have tracked down nearly everything you might need from official documents in the territorial and early statehood periods in Washington.

Chapter 9 is also new to the *Deskbook*. With 36 Indian tribes in Washington State, 6 percent of the state's land held by Indians or Indian tribes, and a growth in tribal self-government, every Washington practitioner should know the basics of Indian law. The chapter reviews federal Indian policy and includes a minimal list of federal, state, and tribal resources that can be used in legal research projects.

"Nonlegal Resources" is the title of Chapter 10 written by Peggy Roebuck Jarrett. In a clear and direct style, the author covers sources that will help you find information about people and organizations, locate factual information, and improve your writing skills.

In the final chapter Jonathan Franklin compiles information about legal resources in Washington.

Included here are tips on how to manage your library, hire a librarian, and select materials and research tools for your library. Directories of filing and library service organizations, document delivery services, legal publishers, and Washington legal periodicals complete the informative material found in this section. This chapter will be a great help to those trying to keep their law libraries current and properly managed, to those making decisions about purchases for office libraries, and to those trying to locate legal materials available in the local area.

The *Deskbook's* appendix presents acronyms and abbreviation used throughout this book and that frequently appear in Washington legal materials.

I am very pleased with the high quality of the material you will find within this *Deskbook*. Many thanks to the authors for their tireless work. Special thanks to the general editor, Cheryl Nyberg, who edited all the chapters, created the book's index, and provided the consistency and standard of excellence so necessary for a work like this. Theresa

Knier worked many hours to put our draft material into a final form with a professional touch—thank you! Thanks also to Reba Turnquist who helped update information about publishers, prices, and the like; to the Gallagher Law Library staff for being supportive and helpful; to the law librarianship student interns who helped cover the Reference Office when we needed extra time to write; to various colleagues around the state who responded cheerfully to our requests for information; and, finally, to our library patrons for asking us questions and helping us learn what legal researchers in Washington need to know.

Readers and Washington legal researchers are invited to send comments and suggestions via email to deskbook@u.washington.edu.

Penny A. Hazelton
Seattle, Washington
January 2002

Notes on Using This Book

This section explains citations and references used throughout this book.

Books, Articles, and Legal Citations

The *Deskbook* contains many references to other publications. The authors have used several formats to distinguish categories of material.

Titles of books, periodicals, looseleaf services, CD-ROM products, and similar items generally appear in *italics*. Authors, editors, and compilers are often named and the publisher and year of publication are given. For periodicals and other publications that are issued or updated on a regular basis, the initial year of publication is followed by an open hyphen (e.g., *Washington State Environmental Reporter* (Book Publishing Co., 1974-)).

References to articles include the author(s), the title of the article in quotation marks, and the abbreviated title of the periodical in *italics*. These abbreviations are spelled out in the Appendix: Acronyms and Abbreviations. If the issues of a volume are paginated consecutively, the volume number appears before the title of the publication and the first page number follows the title, with the year of publication in parentheses (e.g., William R. Andersen, "The 1988 Washington Administrative Procedure Act: An Introduction," 64 *Wash. L. Rev.* 781 (1989)). If the issues of a volume are not paginated consecutively, the citation identifies the issue and then the beginning page number (e.g., Nancy Carol Carter, "American Indian Tribal Governments, Law, and Courts," *Legal Ref. Serv. Q.*, No. 2, 2000, at 7). For articles that are available for free on the Internet,

their citations include the Uniform Resource Locators (URLs) (e.g., Eron Berg, "Unpublished Decisions: Routine Cases or Shadow Precedents?," *Wash. St. B. News*, Dec. 2000, at 28, available at <http://www.wsba.org/barnews/2000/12/berg.htm>).

Citations to some legal sources (such as statutes and cases) follow rules set out in *The Bluebook: A Uniform System of Citation*, 17th ed. (Harvard Law Review Association, 2000), with exceptions recommended by the Washington Office of the Reporter of Decisions *Style Sheet*. *The Bluebook* and the *Style Sheet* are described in Chapter 3, Fundamentals of Legal Research in Washington, Section X, Citation Format.

Internet Websites

In less than a decade, the Internet has become a major legal research tool. Thousands of academic, commercial, governmental, organizational, and personal websites contain the text of legal materials and/or guides, indexes, and commentaries on the law. Government agencies at all levels have quickly made the Internet a primary means for communicating with the public.

Throughout this book, URLs identify websites that contain Washington State legal materials. In many cases, "deep links" to pages buried several layers beneath an agency's main homepage have been used to direct readers to the specific location of legal documents and databases. These URLs and the descriptions of website contents were accurate in fall 2001.

Website addresses and contents change frequently, however. If a website address fails and the source is part of the Washington State government, use the "State Agency Index" on Access Washington, <http://access.wa.gov/>, to locate the agency's new URL. Then look for navigation links, a site index, or a search feature to locate specific material. If the source of the website is not part of the Washington State government, pare back the URL to the first slash after the domain name (ending with .com, .edu, or .org). This shortened URL should

take you to the website homepage. For example, the URL for the Gallagher Law Library's collection of legal research guides is <http://lib.law.washington.edu/ref/guides.html>. If you eliminate "/ref/guides.html", you will go to <http://lib.law.washington.edu/>, the Law Library's homepage.

The University of Washington Gallagher Law Library maintains an Internet Legal Resources page, <http://lib.law.washington.edu/research/research.html>, that links to free websites providing Washington State primary law sources, including the constitution, bills, statutes, court opinions, court rules, regulations, administrative agency decisions, and municipal codes. Comparable links for U.S. government sources are also provided. Internet Legal Resources is updated regularly.

LexisNexis and Westlaw

Many chapters describe files and databases found on the two major commercial legal research services, LexisNexis and Westlaw. In some cases, specific libraries and file names are mentioned. For example, Chapter 5, Administrative Decisions and Materials, includes a list of LexisNexis libraries and files containing administrative agency decisions. The reference to "WASH;WAGMHB" includes the LexisNexis library name for Washington (WASH) and a specific file within that library for the decisions of the Growth Management Hearings Boards decisions (WAGMHB). The comparable database on Westlaw is called WA-GMHB.

When no library, file name, or database identifier is given, the researcher may explore several options for finding relevant material. Both services maintain extensive directories of their contents and these directories are available in print and online. The *Westlaw Database Directory* is published annually; the 2001 edition is 842 pages. The online edition is found at <http://directory.westlaw.com/>. The

LexisNexis *Directory of Online Services* is also published annually; the 2001 edition is 736 pages. The "Searchable Directory of Online Sources" is at <http://web.nexis.com/sources/>. The directories are organized by jurisdiction (Washington), type of legal material (Legislation), and subject or practice area (Environmental Law). They also include indexes by title (*Washington Administrative Code*). Users may also contact the customer service representatives to ask about the availability of particular sources and get advice on constructing effective searches. LexisNexis customers may dial (800) 543-6862. The Westlaw Reference Attorneys may be reached at (800) 733-2889.

Because of their expense and complexity, these services are most often used by members of the legal community. Few public law libraries can afford to make these services available. Faculty and students at some colleges and universities may have access to a version of LexisNexis called Lexis-Nexis Academic Universe or a version of Westlaw called Westlaw Campus. These services offer an abbreviated list of certain legal sources, including full-text federal and state cases, statutes, and law reviews. Other users may take advantage of the vendors' credit card options. LexisNexis by Credit Card, http://web.lexis.com/xchange/ccsubs/cc_prods.asp, is available on a "pay as you go" basis. A user may search legal materials (including federal and state cases, constitutions, statutes, court rules, and law reviews). Westlaw's WestDoc program, <http://www.westdoc.com>, allows users with citations to obtain documents by credit card.

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The authors are interested in readers' comments and suggestions. Please contact us by electronic mail at deskbook@u.washington.edu.

Author Biographies

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Indian Law Research in Washington

Penny A. Hazelton

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- ▶ Federal Indian Policy
- ▶ Indian Law Terminology
- ▶ Scope of Federal, Tribal, and State Power over Indians
- ▶ Practitioner's Checklist
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I. Introduction

This chapter has been added to the third edition of this *Deskbook* because practice of law in the State of Washington will very likely bring you into contact with native people or Indian tribal governments. Today, 28 of the 36 Indian tribes in Washington State are recognized by the federal government.² Tribal land in Washington State totals 2.6 million acres or 6% of the state. In addition, tribes in Washington have significant off-reservation treaty rights to hunt and fish. The U.S. Census Bureau has estimated there are 104,819 American Indians and Alaska Natives in Washington State, ranking it 5th among states with Native American populations.³ Native Americans comprise 1.8% of Washington State's population. Over half of the Native American population in Washington reside in urban areas.

The purpose of this chapter is to inform Washington lawyers about the background and unique characteristics of law relating to Indians in Washington. Depending on the subject of inquiry, fed-

eral, state, and/or tribal law may be implicated. Armed with the necessary background, legal research projects involving individual Indian clients or issues with Indian tribes or tribal land can be more focused and efficient.

Practitioners in Washington State who are faced with a legal dispute involving Indians, an Indian tribe, or Indian trust lands must be mindful that the legal doctrine developed to cope with Indian issues is primarily a body of federal law, interlaced with tribal and state responsibilities. Thus, resort to Washington State law alone will never be enough to solve Indian legal problems. The complexity of the jurisdictional issues (does state, federal, or tribal law apply?) is the primary reason that this chapter contains a short history of federal Indian policy. Also included are definitions of important Indian law terms; a discussion of the scope of powers of the tribal, state, and federal governments; a practitioner's checklist; and a list of federal, Washington, and tribal research tools.

II. Federal Indian Policy

In no area of law does the effect of 200 years of federal policy play such an important role in the legal regime as in Indian law. The government's attempt to deal with Native Americans has seen so many changes that the laws governing Indian affairs reflect these inconsistent policies. Understanding the federal government policies that have shaped this unique body of law is essential.

Indian law scholars divide federal Indian policy into several different eras, each with defining characteristics. The following sections are designed to give the reader a very brief overview of the tumult within which Indian law has been crafted. Excellent, more detailed discussions of the history of federal Indian policy can be found in *Felix S. Cohen's Handbook of Federal Indian Law*, 1982 ed., at 47-206 (Michie, 1982) (hereinafter, Cohen); William C. Canby, *American Indian Law in a Nutshell*, 3d ed., at 10-32 (West Group, 1998) (hereinafter, Canby); and Stephen L. Pevar, *The Rights of Indians and Tribes: The Basic ACLU Guide to Indian and Tribal Rights*, 2d ed., at 1-11 (SIU Press, 1992) (hereinafter, Pevar).

A. Pre-Revolutionary War (Before 1776)

Prior to the Revolutionary War, each of the more than 400 Indian tribes of North America governed themselves and had their own language and culture. In essence, North American Indian tribes were independent governments. Pevar at 2-3. European nations followed the "doctrine of discovery" which recognized Native American rights to occupy traditional territory subject to the jurisdiction of the nation claiming the area as against other nations. The British Colonies began the practice of signing treaties with Indian tribes.

B. Treaty-Making and Federal Authority (1776-1828)

The Articles of Confederation and, later, the U.S. Constitution both recognized federal authority in the regulation of Indian affairs.⁴ Treaty-making with Indian tribes continued through the Articles of

Confederation and the adoption of our new Constitution and was a recognized method of dealing with equals. In this nation's infancy, Congress enacted several laws designed to bring peace between the whites and the American Indians by regulating trade and intercourse (i.e., traders with Indians must have a federal license, non-Indians needed U.S. consent to obtain Indian land, Indians were exempt from complying with state trade regulations).

C. Removal, the End of Treaty-Making, and the Move to Reservations (1828-1887)

Indian policy took an abrupt turn in 1828 when Andrew Johnson was elected President. By 1830, President Johnson's desire to move the Indians from the East to the West took shape in the Indian Removal Act. 4 Stat. 411 (1830). Over the next sixty years, hundreds of Indian tribes were removed to new lands; some more than once. In 1871, Congress eliminated the practice of making treaties with the Indians, but guaranteed the validity of all prior treaties. Thereafter, land cessions were negotiated with tribes and confirmed by statutes or executive orders. Negotiations between Indian tribes and the federal government were called agreements after 1871. For sources of treaties and agreements, see Section VI.D.1.a., below.

D. Allotment and Assimilation (1887-1934)

In 1887 Congress passed the Dawes Act, also called the General Allotment Act. 24 Stat. 388, as amended, 25 U.S.C. §§331-58 (1994). The purpose of this new law was "to break up tribal governments, abolish Indian reservations, and force Indians to assimilate into white society." Pevar at 5. On many reservations, land held communally by Indians was divided among tribal members and non-Indians were allowed to settle on land not reserved to the tribe or to tribal members. Congress felt the sooner Indians adopted the white man's civilized ways, the better. The amount of land held by Indians and Indian tribes declined from 138 million acres in 1887 to 48 million acres in 1934. Canby at 22. With a greatly

reduced land base, tribal governments were much less effective and tribal culture suffered. Public criticism of the impact of this federal policy led to the next significant era for federal Indian policy.

E. Indian Reorganization (1934-1953)

Partially in response to the Meriam Report,⁵ which documented the failure of federal Indian policy during the allotment period, the Indian Reorganization Act (IRA) was passed in 1934. 48 Stat. 984, codified as 25 U.S.C. §§461 *et seq.* (1994). The premise of this new federal policy was that Indian tribes and tribal government should continue to exist and be encouraged in self-government. The practice of allotment was ended and the Secretary of the Interior was authorized to acquire lands and water rights for tribes and to create new reservations. Tribes were encouraged to adopt constitutions and by-laws for self government, though these had to be approved by the Secretary of the Interior. While not all of the statute had the desired effect, the IRA did provide a framework for increased tribal self-government and did stop the further erosion of the tribal land base.

F. Termination (1953-1968)

But, the Indian Reorganization Act had many critics and after a decade of cuts to the U.S. Bureau of Indian Affairs (BIA) budget and attempts to repeal or substantially amend the IRA, Congress adopted a general statement of policy which dominated Indian affairs for more than a decade.⁶ The purpose of this policy was to terminate the relationship of Indian tribes with the federal government by transferring responsibility for the tribes to the states. Specific statutes were passed by Congress terminating various Indian tribes. Federal programs were discontinued; state jurisdiction was imposed in place of federal and tribal jurisdiction over such things as adoption, taxation, and land use; and federal trusteeship over Indian lands was ended. Although the termination acts did not expressly extinguish the governmental authority of the tribe, with-

out a land base, most terminated tribes were not able to exercise their sovereignty. In some cases, however, treaty rights to hunt and fish were found to survive "termination."

Termination of federal responsibility over Indian affairs was aided by the passage in 1953 of Public Law 280. Act of Aug. 15, 1953, ch. 505, 67 Stat. 588. This new law transferred civil and criminal jurisdiction over Indian lands from the federal to state governments in six states (Alaska, California, Minnesota (except the Red Lake Reservation), Nebraska, Oregon (except the Warm Springs Reservation), and Wisconsin (except the Menominee Reservation)) and permitted assumption of jurisdiction over Indians by other states in the future. A 1968 amendment permits state assumption of jurisdiction only if the tribe consents. The State of Washington was not a mandatory PL 280 state, but it enacted enabling legislation that permits assumption of state jurisdiction in certain circumstances. RCW §§37.12.010-150 (2000). In fact, Washington did assert PL 280 jurisdiction in a piecemeal fashion. See *Washington v. Confederated Bands and Tribes of the Yakima Indian Nation*, 439 U.S. 463 (1979).

G. Tribal Self-Determination (1968 to Present)

The Indian Civil Rights Act (ICRA) was passed in 1968, signaling an end to the termination policies of the previous fifteen years. 82 Stat. 77, 25 U.S.C. §§1301 *et seq.* (1994). Traditionally, tribal government activities were not restricted by constitutional mandates applicable to the federal government through the Bill of Rights or to the states through the 14th Amendment. Though representing a federal incursion upon the sovereignty of the tribes, at least this law, which imposed on the tribes most of the requirements of the Bill of Rights, assumed the continued existence of tribal governments. Many other federal laws were enacted during this period, permitting tribes to manage their own affairs with the greatest degree of autonomy and reinforcing the trust relationship between the

federal government and Native American tribes. Tribal sovereignty and self-government have led to more systematic law-making by Indian tribes and to an assertion of control and jurisdiction over many aspects of the life of tribal members and activities taking place on tribal lands.

III. Indian Law Terminology

All areas of law have their own language, and this is certainly true of Indian law. Even seemingly simple words have a specialized meaning that must be understood by the legal researcher. Where definitions are not completely clear, knowing this uncertainty may help the researcher think of a strategy or argument that will be useful to the client. The following list is not comprehensive, but it can help identify terms of art used in Indian law.

A. Who Is an Indian?

Indian tribes have the power to determine membership in the tribe. "Indian" may also be defined by federal statute, treaty, executive order, or proclamation. In rare circumstances, individual Indians could be entitled to certain federal programs and not meet the requirements for tribal enrollment and vice versa. All Indians are U.S. citizens and may also be enrolled members of Indian tribes. Throughout this chapter, the word Indian is used interchangeably with Native American.

B. What Is an Indian Tribe?

In everyday use, Indian tribe refers to a group of Indians who share a common heritage and speak a distinct language. Any group of Indians can call themselves a tribe and be recognized by other Indian tribes. The terms Indian band or nation are often used by the tribe itself and are used synonymously here with Indian tribe. An Indian tribe's legal status depends on federal recognition.

C. What Is a Federally Recognized Tribe?

The legal definition of an Indian tribe ordinarily rests on whether the tribe has been officially recognized by the federal government. Federally recognized tribes with powers of self-government are required by statute to be named on a list maintained by the Secretary of the Interior. 25 U.S.C. §479a-1 (1994). The current list is at 65 Fed. Reg. 13,298-13,303 (March 13, 2000), available at <http://www.doi.gov/bia/tribes/313fr.pdf>. However, other federal statutes may define other Indian groups or tribes for certain purposes.

Federal recognition acknowledges a government-to-government relationship between the Indian tribe and the federal government. Regulations that govern application for federal recognition can be found at 25 C.F.R. Part 83. The U. S. Bureau of Indian Affairs has an excellent website that answers many questions about the process. The "Acknowledgement Guidelines" can be found at <http://www.doi.gov/bia/bar/arguide.html>.

See Appendix I, below, for a list of federally recognized Indian tribes in Washington and of tribes that do not have federal recognition.

D. What Is Indian Country?

The phrase "Indian country" has a special meaning in Indian law. Determination that the action in question took place on land defined as Indian country may well determine which government (federal, state, or tribal) has jurisdiction. Codified in 1948 in federal criminal statutes (18 U.S.C. §1151 (1994)), the statutory definition of Indian country applies to civil matters, as noted in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). Indian country includes reservation land, allotted land, and dependent Indian communities, even when the latter two types of land are located outside the bounds of the reservation. Thus, the phrases "Indian country" and "Indian reservation" do not have an identical meaning.

Land that has been set aside by the federal government or reserved by the tribe in treaty, statute,

executive order, or agreement for the use, possession, and benefit of an Indian tribe is called a reservation. All land within the bounds of a reservation is Indian country—including land owned in fee simple by non-Indians and rights of way.

Some Indians reside on allotments located outside of the reservation. These lands are of two kinds—trust allotments and restricted-fee allotments. Both types of land are Indian country, whether located on the reservation or not. The only difference between trust and restricted fee allotments is that legal title to trust allotments is held by the United States for the benefit of the individual Indian, while restricted-fee allotments are held by individual Indians subject to restrictions on alienation.

It is critical to note that the jurisdictional consequences that arise from the fact that an area is Indian country can vary considerably depending on the subject matter of a dispute and whether the governmental actors are tribal, state, or federal. Research in this area nearly always requires a review of federal case law, treaties, statutes, or agreements that may be peculiar to the tribe involved, or general in their application.

E. What Is the Federal Trust Responsibility?

A most important underpinning of Indian law is that the federal government owes a duty or responsibility to Indians to keep the promises made by the government in treaties and other dealings with Native Americans. This federal trust responsibility is a fundamental principle of Indian law and has been articulated in hundreds of Indian law cases, beginning with *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831).

Though the doctrine of the federal trust responsibility was originally created to enforce trust commitments, later case law found that federal laws, agreements, and executive orders can also create trust obligations. Extension of the trust responsibility may also include implied, not just express, commitments. Also arising from the trust

responsibility is an independent obligation upon the federal government to protect and promote the interests of Native American tribes, including their interests in self-government.

F. What Is Tribal Sovereignty or Tribal Self-Government?

Woven into the fabric of Indian law is the inherent right to tribal self-government. First articulated in the famous case of *Worcester v. Georgia*, 31 U.S. 515 (1832), this principle is essential to understanding the basis of the Indian power of self-government. The key notion here is inherent. Rights to self-determination or self-government are not delegated to the tribes by the federal government, but are an inherent attribute of being a distinct political group.

The federal government can limit or abolish tribal powers but unless Congress acts, the tribe retains all powers of self-government. In fact, over the years Congress has acted to limit the sovereignty of tribes in many ways (see Section II, Federal Indian Policy, above). But most tribes still have inherent rights to self-government in many activities. The consequence of this rule creates the division of power between the tribes, the state, and the federal government which in turn makes research in Indian law so complex. In addition, Congress has delegated authority to tribes in some areas such as liquor regulation and certain environmental issues.

G. What is PL 280?

In 1953 during the period of termination, Congress passed a law giving certain states criminal jurisdiction over Indian country and making state courts available to hear civil cases. Act of Aug. 15, 1953, ch. 505, 67 Stat. 588. Popularly called PL 280, this act was mandatory in some states and discretionary in others. PL 280 was eventually amended to require tribal consent to state jurisdiction. Washington was not a mandatory state, but it did enact legislation that assumed full civil and criminal jurisdiction over eight subjects: compulsory

school attendance, public assistance, domestic relations, mental illness, juvenile delinquency, adoption proceedings, dependent children, and operation of motor vehicles. RCW §37.12.010. PL 280 did not give states regulatory jurisdiction over Indian country. *Bryan v. Itasca County*, 426 U.S. 373 (1976).

However, many tribes in Washington have exclusive or concurrent jurisdiction with the state over some or all of these eight issues. Washington State's assertion of regulatory authority in the civil arena is limited to hearing civil causes of action. Some tribes were excluded from this assumption of jurisdiction by Washington statute, and some tribes have retroceded from state jurisdiction. 25 U.S.C. §1323 (1994). Retrocession of jurisdiction is the process by which a state gives back jurisdiction to the tribe and/or federal government. Most recently the Tulalip Tribe has been granted retrocession by the State of Washington and the federal government so the tribe, not Snohomish County, will handle all major crimes committed by Indians on the Tulalip reservation. Where major criminal cases were once handled in county and state courts, they will now be handled by the Tulalip tribal court or federal court. Retrocession notices must be published in the *Federal Register*.

IV. Scope of Federal, Tribal, and State Power over Indians

The most difficult problem facing the Washington practitioner handling an Indian law case is determining what governmental unit has jurisdiction over the subject matter of the case. Is the matter under exclusive tribal, state, or federal jurisdiction? Or does some combination of concurrent jurisdiction among the three governmental units exist? Jurisdiction is the threshold question in most Indian law cases.

Unfortunately, at this time, there is no publication in Washington that articulates the black letter law for each tribe and each type of subject matter. The difficulty in determining jurisdiction is compounded by the fact that with some subject matter

and some tribes the rules are not yet settled. The question of jurisdiction may well be the pivotal issue in your case.

A good, general overview of Washington law related to Indians is very hard to find. However, Robert McCarthy's 1999 article from the *Washington State Bar News* may be a good place to start.⁷ A handout prepared by the Washington Association of Prosecuting Attorneys for federal and state law enforcement officials (also given to tribal law enforcement personnel) outlining the basic rules of jurisdiction for crimes committed in Indian country is included as Appendix II, below. Please note that in many areas of Indian law, jurisdictional questions are unsettled. Read material written about Indian law critically and evaluate the interests and possible bias of the author.

Many Indian law cases in Washington have been over the question of jurisdiction. Because of the importance of the jurisdictional question, knowing the facts about the Native American client, defendant, or the Indian tribe involved is essential.

V. Practitioner's Checklist

Should you have an Indian client, an Indian party in a case, or have dealings with an Indian tribe, several facts must be established. Answers to the questions below can help the researcher understand the jurisdictional issues.

- Is the person an enrolled member of an Indian tribe?
- What tribe?
- Are there treaties, executive orders, proclamations, regulations, or federal or state legislation regarding this tribe?
- Is the tribe federally recognized?
- Where did the activity subject to legal scrutiny occur—on reservation land or on trust or fee land within or outside the boundaries of the reservation?

- Is this situation a civil or criminal matter?
- Are the other parties Indian or non-Indian?
- Assuming you are dealing with a Washington tribe or tribal member, did the state assume jurisdiction for certain matters under PL 280?
- Has there been a retrocession of jurisdiction under PL 280?

Answers to some of these questions may not be easy to determine. A short history of each of the Native American tribes in Washington can be found on the website of the Governor's Office of Indian Affairs (GOIA), <http://www.goia.wa.gov/tribalinfo/index.html>. A list of the federally recognized tribes in Washington is included as Appendix I, below, and can also be found on the GOIA website, <http://www.goia.wa.gov/directory/toc.html>.

Much more in-depth documentation about many Washington tribes can be found on the webpage of the U.S. Bureau of Indian Affairs, Branch of Acknowledgement and Research, http://www.doi.gov/bia/ack_res.html. This website includes many of the petitions and technical papers filed by a tribe seeking federal recognition. These documents are a rich source of tribal history. For example, the most recent tribe to receive federal recognition was the Snoqualmie Tribe on October 6, 1999. Several of the documents filed by the tribe as well as the findings of the Bureau of Indian Affairs can be found at <http://www.doi.gov/bia/bar/snoqdx.html>.

The Native American Law Center at the University of Washington School of Law is planning a book (for publication in 2003) that will include detailed information about each Washington tribe, focusing particularly on jurisdictional issues. Check the Center's website for more information, <http://www.law.washington.edu/IndianLaw/>. In addition, the Center is available to provide general information on Indian law issues.

VI. Research Tools

Research in Indian law involves federal, state, local, and tribal resources. This chapter is aimed primarily at the Washington practitioner and after reference to important, selected sources of national scope, this section will describe tools with a specific Washington focus. But even the Washington practitioner will need to use federal materials for most Indian law questions.

A. Research Guides

Nancy Carol Carter, "American Indian Law: Research and Sources," *Legal Ref. Serv. Q.*, Winter 1984/85, at 7.

This comprehensive bibliography is an essential tool for legal researchers who are new to the Indian law area. Excellent annotations for primary, secondary, and nonlegal sources listed. Though dated, this guide references virtually all the print materials available, except individual periodical articles and books published since the mid-1980s. Includes an explanation of each type of authority, its historical context, coverage of the research tool, and tips for using the material. Professor Carter has a new book coming out on this subject.

Nancy Carol Carter, "American Indian Tribal Governments, Law, and Courts," *Legal Ref. Serv. Q.*, No. 2, 2000, at 7.

This research guide focuses on tribal law with citations to Indian tribal constitutions, codes, court reports, and secondary sources.

Bruce Elliott Johansen, ed., *The Encyclopedia of Native American Legal Tradition* (Greenwood Press, 1998).

Eclectic collection of short essays on Indian tribal legal systems and Indian and non-Indian people (for example, Governor Stevens and David Sohapp) involved in the formation of Indian law. Also includes annotations of important Indian law cases, statutes, and treaties. Extensive footnotes and references. Covers some Washington tribes.

B. Treatises, National in Scope

Hundreds of books have been written on the subject of American Indian law. Identifying appropriate titles in library catalogs can be done by looking for books with the Library of Congress subject heading, "Indians of North America," or under the name of the tribe. Note that the spelling of tribal names can vary tremendously. To locate everything, include all spelling variations (for example, the Yakama Nation was for years named the Yakima Nation).

In libraries using the Library of Congress classification system, American Indian law materials will be found from KF8201 to KF8230. The following three titles are extremely important and can help answer many questions for the researcher new to Indian law.

William C. Canby, *American Indian Law in a Nutshell*, 3d ed. (West Group, 1998).

A quick easy introduction to American Indian law. Discusses prominent cases and legislation. Includes some citation to relevant legal materials, but not extensive.

Felix S. Cohen, *Felix S. Cohen's Handbook of Federal Indian Law*, 1982 ed. (Michie, 1982).

The only comprehensive treatise on the subject of Indian law, Cohen is the essential book on this complex subject. Revises the 1942 classic written by Felix Cohen. A new edition is in the drafting stage. The original Felix Cohen handbook published in 1942 was reprinted, but not updated, in 1986. An electronic version of the 1942 work can be found on the Internet, <http://thorpe.ou.edu/cohen.html>. An official government update of the 1942 Cohen work was published in 1958 and should be avoided due to poor scholarship and bias.

Stephen L. Pevar, *The Rights of Indians and Tribes: The Basic ACLU Guide to Indian and Tribal Rights*, 2d ed. (SIU Press, 1992).

This American Civil Liberties Union handbook is an excellent starting point for Indian law legal research. Written in question and answer format, with extensive citations to cases, statutes, and other legal materials, a new edition is due in 2002.

C. Periodical Literature

A wealth of periodical literature on the subject of Native American law has been published. From case notes and comments to professional articles, many Indian law topics are covered. The only print academic law journal devoted exclusively to Indian law is the *American Indian Law Review* from the University of Oklahoma Law School. However, the University of New Mexico Law School began publication in 2000 of a new online-only journal, the *Tribal Law Journal*, <http://tlj.unm.edu/>.

The *Index to Legal Periodicals* (ILP) and *LegalTrac* (*Current Law Index* in print; *Legal Resource Index* on Westlaw and LexisNexis) both use "Indians of North America" as their subject heading for articles about Native American law. The *Current Index to Legal Periodicals* (CILP) (<http://lib.law.washington.edu/cilp/cilp.html>) is a weekly index of legal periodical literature and uses the subject heading, "Indian Law." These indexes may be found in print, on Westlaw and LexisNexis, and on the Internet for a fee.

Many full-text law reviews are available on LexisNexis, Westlaw, and sometimes on the Internet for free. Searches in the full-text articles will often yield too many hits. The researcher is advised to limit the search to the title field or segment of the database. Finding one, good, current article will lead the researcher to other secondary and primary legal materials.

The Tribal Law and Policy Institute's Tribal Court Clearinghouse, <http://www.tribal-institute.org>, includes a small, searchable database of selected full-text periodical articles. *A Bibliography of Indian Law Periodical Articles*, 2d ed. (Hein, 1992) includes subject access (including tribal name) to law review articles published between 1980 and 1991.

D. Primary Law Sources

Locating the primary sources—codes, court decisions, and administrative rules and decisions—for Indian law is similar to research for any other area of law with three important additions. First, as noted above, treaties often govern Indian and non-Indian relationships; thus Indian treaty sources must be reviewed. Second, tribal-state agreements or compacts are often used to settle jurisdictional questions between state, local, and tribal governments. These compacts may be relevant to specific situations. Third, for most projects, research in federal and/or state law (sometimes city or county law) is usually enough. But cases involving Indian law may also require access to tribal constitutions, legislation, court opinions, and administrative rules and decisions.

I. Treaties and Tribal-State Compacts

a. Treaties

Indian treaties are negotiated between the federal government and Indian tribes. Congress abolished treaty-making in 1871, so all subsequent dealings with Indian tribes are called agreements. Most agreements after 1871 were issued as executive orders or proclamations or enacted as federal law. Traditional treaty sources exclude Indian treaties. However, most treaties and agreements can be found in one of the print sources noted below. Several free Internet websites also contain Indian treaty collections. The collections below contain most Indian treaties and agreements. Check the Carter bibliography (Section VI.A, Research Guides, above) if these sources do not include the treaty you need.

Charles J. Kappler, ed., *Indian Affairs: Laws and Treaties*. 5 vols. (AMS Press, 1972 reprint of 1903-41 edition); 2 vols. (U.S. Government Printing Office, 1979); 1 vol. (U.S. Government Printing Office, 1975).

The classic work in this field includes treaties, agreements, statutes, and other official government documents pertaining to the American Indian.

Most are reprinted from the U.S. *Statutes at Large*. Not comprehensive. The 1979 volumes include materials from 1938 to 1970 and the last volume in the series includes federal regulations (based on the 1973 *Code of Federal Regulations*) relating to Indians. The first three volumes are in electronic form at <http://thorpe.ou.edu/treaties.html>.

American Indian Treaties Series. 9 vols. (Institute for the Development of Indian Law, 1973-)

An alternative to the well-known Kappler. Includes some treaties and agreements not in Kappler. Includes a separately published index, *A Chronological List of Treaties and Agreements Made By Indian Tribes with the United States* (Institute for the Development of Indian Law, 1973).

United States Statutes at Large.

Volume 7 contains many but not all treaties.

U.S. Department of Energy, EnviroText, <http://envirotext.eh.doe.gov/index.html>.

Contains a searchable database of American Indian treaties. No list of treaties included could be found, but searches can be done using the name of the tribe.

University of Oklahoma Law Library and National Indian Law Library of Native American Rights Fund, Native American Constitution and Law Digitization Project, <http://thorpe.ou.edu/>.

Fully searchable with three volumes of Kappler digitized at this time. Also includes searchable treaties of the Senekas and Six Nations that are not included in the Kappler collection.

b. Tribal-State Compacts

More cooperation between tribal governments and states in the past ten years has resulted in the negotiation of many tribal-state compacts to settle issues in environmental and other regulatory areas. Some of these compacts must be approved by the U.S. Bureau of Indian Affairs (gaming is one area

where this is required); others require no federal approval or oversight. Compacts are not regularly published.

American Indian Law Deskbook: Conference of Western Attorneys General (University Press of Colorado, 1993).

An overview of American Indian law from the point of view of the Attorneys General of the Western states. Excellent chapter on cooperative agreements between the state and the tribe, including examples of how compacts have been used.

U.S. Bureau of Indian Affairs, Gaming Compacts, <http://www.doi.gov/bia/gaming/complis/gamingcmptindex.htm>.

Notice of approval but not the full text of gaming compacts between the states and tribes must be published in the *Federal Register*. The Bureau publishes a summary of each compact on this website.

2. Constitutions and Statutes

a. Federal

Most federal statutes about Indians and Indian tribes are collected in Title 25 of the *United States Code*. Criminal statutes are found in Title 18. Check the subject index (including the name of the tribe) to locate other statutes of interest codified in other titles. Besides the print *United States Code* and the annotated versions (U.S.C.A. and U.S.C.S.), federal law can be found on LexisNexis, Westlaw, and any number of free and low-cost Internet sites. For links to the free sites, see the Internet Legal Resources page of the University of Washington Gallagher Law Library website, <http://lib.law.washington.edu/research/research.html>.

b. Tribal

Not all tribal codes and constitutions are available in a print or electronic form. Contact the tribal attorney⁸ if you are unable to locate a copy or are concerned about the currency of the copy of the code or constitution you have located. Some tribal codes have been published and can be purchased,

such as the *Navajo Tribal Code*, and can be located by checking library catalogs. Some are only available from the tribe itself. Various collections of tribal codes have been published or posted on the Internet. Always check with the tribe for currency!

Charters, Constitutions and By-laws of the Indian Tribes of North America (Colorado State College, 1967-72).

Published in 18 parts, part 15 includes materials for tribes in Washington and Oregon.

Ralph W. Johnson & Richard Davies, eds., *Indian Tribal Codes: A Microfiche Collection*, 1988 ed. (University of Washington Gallagher Law Library, 1988).

Fifty-six tribal codes and constitutions with introduction and analysis. Indexes specific subject codifications within individual codes. Seventy-one page manual with codes in microfiche format. Updates, but does not replace, the 1981 edition. To view the list of tribes represented or to purchase this historical collection, see <http://lib.law.washington.edu/pubs/ind1988.html>.

Ralph W. Johnson & Susan Lupton, eds., *Indian Tribal Codes: A Microfiche Collection*, 1981 ed. (University of Washington Gallagher Law Library, 1981).

Sixty-nine tribal codes and constitutions comprise this collection. Many not included in 1988 edition. Includes a 42-page manual with the codes in microfiche. For a list of the tribes represented or information about purchase, see <http://lib.law.washington.edu/pubs/ind1981.html>.

Tribal Law and Policy Institute, Tribal Court Clearinghouse, <http://www.tribal-institute.org/lists/codes.htm>.

Links to sites containing tribal codes, including tribal, educational, and organization websites. Important collections of tribal codes can be found on

the following websites. None of these websites is comprehensive at this time.

- U.S. Department of Energy, EnviroText, <http://envirotext.eh.doe.gov/index.html>.
Large collection of environmental codes and regulations of U.S. Indian tribes is full-text searchable. For a list of codes included in the database, see http://envirotext.eh.doe.gov/data/triblaw/tl_toc.html.
- Native American Rights Fund, National Indian Law Library, <http://narf.org/nill/Nillindex.html>.
Links to several Native American tribal codes and constitutions. Also search the National Indian Law Library catalog to locate other in-print tribal codes and constitutions.
- National American Indian Court Judges Association, National Tribal Justice Resource Center, <http://www.tribalresourcecenter.org/index.htm>.
Contains constitutions from only seven tribes, none from Washington State. May not be current. Searchable.
- National Indian Justice Center, <http://nijc.indian.com/>.
Incorporated in 1983 as an independent national resource for tribal courts, the NIJC site includes many training manuals, several model codes, and links to other code sites.
- University of Oklahoma Law Library and National Indian Law Library of Native American Rights Fund, Native American Constitution and Law Digitization Project, <http://thorpe.ou.edu/>.
A very complete set of original constitutions and charters of Indian tribes is located at <http://thorpe.ou.edu/IRA.html>. At present there are a few tribal codes available on this site

with more to be added, <http://thorpe.ou.edu/codes.html>.

- The Tribal Legal Code Project, <http://www.tribal-institute.org/codes/overview.htm>.

Prepared for the U.S. Department of Housing and Urban Development, Office of Native American Programs by the Tribal Law and Policy Institute, this site includes model codes, especially in those areas related to housing. Includes model codes for housing, land use, zoning, building, commercial, corporation, environmental, and probate.

3. Court Opinions

a. State and Federal Cases

State and federal cases involving Native American law can be found in the national reporter system and official state reports. These cases are also found on Westlaw, LexisNexis, Loislaw, VersusLaw, and other electronic databases as well as in CD-ROM products. Subject access to cases is through the West Digest topic "Indians." Westlaw also has a practice database called Native Americans Law (FNAM) that includes cases; statutes; administrative materials; treaties; and selected legal newspapers, periodicals, and journals.

The best way to keep up on important Indian law cases across the country is with the *Indian Law Reporter* (American Indian Lawyer Training Program, 1974-), which reproduces all federal and state court cases.

b. Tribal Court Cases

There is no comprehensive publication of Indian tribal court cases. Some tribes have begun to publish their own opinions in tribal court reporters, such as the *Navajo Reporter*. The *Indian Law Reporter* contains selected tribal court opinions. Check with the clerk of the tribal court or tribal attorney to obtain a copy of a specific opinion.

Westlaw contains Oklahoma Indian tribal courts decisions in the OKTRIB-CS database.

The National American Indian Court Judges Association, National Tribal Justice Resource Center, <http://www.tribalresourcecenter.org/index.htm>, includes a searchable database of 200 tribal court opinions through arrangement with VersusLaw. Select court opinions from the menu on the Center's homepage.

4. Administrative Rules and Decisions

The U.S. Department of the Interior, Bureau of Indian Affairs (BIA), has oversight of Indian matters. Their mission:

. . . is to enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians, Indian tribes and Alaska Natives. We will accomplish this through the delivery of quality services, maintaining government-to-government relationships within the spirit of Indian self-determination. <http://www.doi.gov/bia/mission.html>.

The BIA's excellent website includes information about Indian tribes and their governments and details about the services offered by the BIA and other government agencies, <http://www.doi.gov/bureau-indian-affairs.html>. Note that the BIA has created websites for some of the specific laws that it is responsible for implementing. For example, the Indian Self-Determination and Education Assistance Act of 1975 (25 U.S.C. §450) website includes the full text of the law, regulations, and other agency materials, <http://www.doi.gov/bia/self-determ/resources.htm>.

BIA regulations are published in Title 25 of the *Code of Federal Regulations*, updated daily with the *Federal Register*. Both of these titles can be found in print, on the Internet, and on Westlaw and Lexis-Nexis. See the Gallagher Law Library Internet Legal Resources page for links to current free Internet sites containing these titles, <http://lib.law.washington.edu/research/research.html#fedrules>.

For administrative decisions and actions by the BIA that have a legal impact on Native Americans

and Indian tribes (e.g., federal recognition of an Indian tribe) check its website, <http://www.doi.gov/bureau-indian-affairs.html>.

E. Directories and Reference Materials

The best source of current information about governmental and private organizations with an interest in Indian law can be found on the National American Indian Court Judges Association, National Tribal Justice Resource Center webpage, <http://www.tribalresourcecenter.org/pages/resources.htm>. The researcher will find links to tribal organizations, legal services groups, and a myriad of other relevant websites.

A somewhat dated directory, *Native Americans Information Directory*, 2d ed. (Gale, 1998) is a comprehensive guide to organizations, agencies, institutions, programs, publications, and services concerning indigenous people in the U.S. and Canada. Web addresses are included when known.

To keep up on news of and about Indian issues, Indianz.com, <http://indianz.com/>, collects current news stories and other information of interest to Indian law researchers.

F. Research Tools for Washington Tribes

Official Washington State policy regarding Indian affairs is memorialized in the 1999 Tribal and State Leader's Summit, <http://www.goia.wa.gov/govtogov/agreement.html>. The agreement reached at the Summit builds on the 1989 Centennial Accord, <http://www.goia.wa.gov/govtogov/centennial.html>, which recognized a government-to-government relationship between the state and the various Indian tribes. This policy does not solve the many jurisdictional issues that are a part of Indian law research in Washington State, but it does set out a course of dealing with Native American tribes that may well encourage more tribal self-government and less state action.

Remember that the Washington-specific materials must be used in conjunction with the federal materials. Citations have not been duplicated, so it

may be necessary to check Sections VI.A-E, above, for more references.

1. Research Guide

West's Washington Law Finder (West, annual).

An annual index to federal and Washington law, locate references under topics "Indian Reservations" and "Native Americans." Cites to federal and state statutes, West practitioner publications (*Washington Practice*), West treatises, and C.J.S. Does not cite to cases or administrative rules and regulations. Note that there are two entries for Native Americans, one primarily for federal references and the second citing primarily Washington-specific statutes and treatises.

2. Treatises and Books

There is no book that covers just the law of Washington State Indian tribes. Search the University of Washington Gallagher Law Library's online catalog, <http://marian.law.washington.edu>, using the name of the tribe (remember spelling variations) to find specific works on individual tribes. The following materials may help locate useful analysis of Indian law issues in Washington and cite to relevant treaties, statutes, executive orders, and other secondary sources.

Sharon O'Brien, *American Indian Tribal Governments* (University of Oklahoma Press, 1989).

A useful description of the tribal government of the Yakima (now, Yakama) Nation at pages 29-33 and 181-96.

Tribal Court Family Law Handbook: A Beginner's Manual (Northwest Women's Law Center, 1999).

Written to help nonlawyers involved in family law matters in tribal court. Chapters cover procedures, dissolution, paternity, child custody, child support, and domestic violence. Question and answer format. Cites authorities. Chart of Washington tribes with various tribal codes in force. Chapter

VIII includes legal references to important cases and statutes.

Ralph W. Johnson & Rachael Paschal, eds., *Tribal Court Handbook for the 26 Federally Recognized Tribes in Washington*, 2d ed. (Washington State Bar Association, Indian Law Section, 1992).

Background on Indian tribal courts. Cites authorities. Profiles the court systems of each of the federally recognized tribes.

Washington Practice (West Group).

This series contains few references to help the Washington attorney with an Indian client or Indian tribe. However, check these volumes for some helpful information, particularly the volumes dealing with environmental law and Indian tribes.

Adoption

Kelly Kunsch, ed., 1 *Washington Practice: Methods of Practice*, 4th ed. (West, 1997).

Chapter 22 includes information on the Indian Child Welfare Act and when it applies to adoption of Indian children. See especially sections 22.20 and 22.49-22.51. Includes forms.

Child Support

Kenneth W. Weber, 20 *Washington Practice: Family and Community Property Law with Forms* §§38.8.5 and 39.19 (West Supp. 2000).

Jurisdiction for child support issues may be state or tribal. Describes efforts under RCW §26.25.020 of the Washington State Department of Social and Health Services and tribes to enter cooperative agreements to establish, modify, and enforce child support orders.

Criminal Law

Royce A. Ferguson, Jr., 12 *Washington Practice: Criminal Practice and Procedure with Forms*, 2d ed. §1602 (West, 1997).

Notes that the state may lack jurisdiction over crimes committed on Indian reservations with citations to a few authorities.

Dissolution

Kenneth W. Weber, 20 *Washington Practice: Family and Community Property Law with Forms* §30.13 (West, 1997).

Inaccurately states that Washington State courts have exclusive jurisdiction over dissolution proceedings. History of Superior Court Civil Rule 82.5 is more complete than in other *Washington Practice* volumes (see tribal court jurisdiction below).

Environmental and Natural Resources Law

Heller Ehrman White & McAuliffe, 23 *Washington Practice: Environmental Law and Practice* (West, 1997).

Chapter 3, "Environmental Law and Tribal Rights," provides good background and overview with many citations. Covers tribal regulation of clean air and water as well as tribal control of land use and natural resources, such as fish and water rights.

Paternity

Kenneth W. Weber, 21 *Washington Practice: Family and Community Property Law with Forms* §45.31 (West Supp. 2000).

Jurisdiction for questions of paternity may be state or tribal. Notes efforts under RCW §26.25 .020 of the Washington State Department of Social and Health Services and tribes to enter cooperative agreements to establish paternity. References further discussion at §39.19.

Termination of Parental Rights

Karl B. Tegland, 5B *Washington Practice: Evidence Law and Practice*, 4th ed. §702.48 (West, 1999).

Explanatory notes under Evidence Rule 702 (testimony by experts), references federal Indian Child Welfare Act and notes that expert testimony required for termination of Indian parent rights.

Torts: Tribal Immunity from Suit

David K. DeWolf & Keller W. Allen, 16 *Washington Practice: Tort Law and Practice*, 2d ed. §11.11 (West, 2000).

Kelly Kunsch, 1A *Washington Practice: Methods of Practice*, 4th ed. §50.13 (West, 1997).

Native American tribes are not subject to garnishment.

Tribal Court Jurisdiction

Superior Court Civil Rule 82.5 was adopted and became effective September 1, 1995 without a published purpose statement. This rule assumes federal statutes confer exclusive and/or concurrent jurisdiction on tribal courts in certain cases. Cases where exclusive jurisdiction rests with the tribal courts are to be dismissed from state superior courts. Cases with concurrent jurisdiction can be removed to tribal court after the superior court has considered specific factors. The rule also requires that superior courts recognize and enforce judgments and orders of tribal courts. Analysis of this rule can be found in the following places:

- David E. Breskin, 10A *Washington Practice: Civil Procedure Forms and Commentary* 485-96 (West, 2000).
- Lewis H. Orland & Karl B. Tegland, 4 *Washington Practice: Rules Practice*, 4th ed. CR 82.5 (West Supp. 2001).
- Kenneth W. Weber, 20 *Washington Practice: Family and Community Property Law with Forms* §30.13(2) (West, 1997).

Includes the most complete history of this court rule.

Annual Western Regional Indian Law Symposium (Washington Law School Foundation, 1987-).

This annual continuing education program sponsored by the University of Washington School of Law is an excellent way to keep up-to-date on law as it affects Indian tribes in Washington and throughout the West. Outstanding faculty of tribal

attorneys and judges, private attorneys who specialize in Indian law, state and federal government attorneys who work with Native American tribes, and legal scholars. Identify experts from speakers. Subject and author access to this collection of presentations can be found on the University of Washington Gallagher Law Library website, <http://lib.law.washington.edu/ref/indiancle.html>.

3. Periodical Literature

It is challenging to identify articles that just deal with legal issues of Washington tribes whether using full-text databases or periodical indexes. This problem is created primarily because of the difficulty in limiting any search to articles about Washington Indian law only. Washington State Indian tribes have been involved in nationally significant litigation in almost every area of Indian law.

The electronic versions of ILP and *LegalTrac* permit the searcher to retrieve all articles written specifically about a particular case or statute. Or KeyCite or Shepardize the cases to find relevant periodical articles.

There is no one comprehensive article about Washington State law regarding Indians. However, Robert McCarthy's, "Native Justice: A Look at Tribal Court Jurisdiction in Washington State," *Wash. St. B. News*, Aug. 1999, at 38, <http://www.wsba.org/barnews/1999/08/mccarthy.htm>, would be a good beginning.

4. Primary Law

In addition to the national sources described in Section VI.D, above, the following items focus on material relating to Indian tribes in Washington State.

a. Treaties and Tribal-State Compacts

Treaties and Agreements of the Indian Tribes of the Pacific Northwest (Institute for the Development of Indian Law, 1974) (American Indian Treaties Series vol. 2).

Governor's Office of Indian Affairs, Treaties, <http://www.goia.wa.gov/treaties/index.html>.

Contains six treaties with Washington State Indian tribes (1854-1856).

b. Constitutions and Statutes

i. State

The most important state statute dealing with Indians is RCW §§37.12.010-150 (2000). This is the statute pursuant to PL 280 (see Section III.G, above) in which the state declared its intention to take jurisdiction over Indian tribes in Washington from the federal government. There are several United States Supreme Court decisions and scores of lower federal court decisions construing the statute.

Other statutes relating to Indians in Washington can be located by looking in the *Code's* index under "Indians," "Native Americans," or the name of the tribe. Some statutes will be easier to identify if the researcher checks the subject (such as probate or domestic relations) first, then, looks for sections that apply specifically to Native Americans.

ii. Tribal

To locate tribal laws see Section VI.D.2.a, above. Also check the catalog of the Gallagher Law Library, <http://marian.law.washington.edu/>, using the name of the tribe. The Library has a large number of Washington State Indian tribal codes in print.

c. Court Opinions

i. State

Access to both federal and Washington state case law is important when researching an Indian law issue. See Section VI.D.3.a, above. Remember that *West's Washington Digest 2d* provides subject access (topic is "Indians") to Washington State court cases and federal cases arising from Washington. Thus, important court opinions of the U.S. Supreme Court and from other federal circuits and district courts would be missed.

For access to Washington court opinions alone, check the *Washington Reports 2001 Cumulative Subject Index*, covering Supreme Court and Court of Appeals cases from 1979 to February 2001. This index is published in a new edition each year.

ii. Tribal

The *Indian Law Reporter* publishes Indian law cases from all state and federal courts as well as selected tribal appellate court opinions. Tribal court opinions from Washington tribes can also be found in the following source on a selected basis:

National American Indian Court Judges Association, National Tribal Justice Resource Center, <http://www.tribalresourcecenter.org/index.htm>.

Currently includes opinions from the Colville Confederated Tribes Court of Appeals. Other Washington tribal courts may publish here in the future.

d. Administrative Rules and Decisions

i. State

In Washington State, the Governor's Office of Indian Affairs serves as liaison to tribal governments in an advisory, resource, consultation, and educational capacity. Their website, <http://www.goia.wa.gov/directory/toc.html>, contains a current tribal directory, resources for tribal development, some treaties, and other information for tribes.

Many agencies, from the Department of Social and Health Services to the Department of Ecology, promulgate rules and regulations that affect Indians and Indian tribes. For easy access to Washington state administrative agency websites, go to <http://access.wa.gov> and click on Index.

Administrative regulations are published in the *Washington Administrative Code* (WAC) and updated by the twice monthly *Washington State Register*. Regulations relating to Indians will be found under the subject heading "Indians." However, the print index to the WAC does a poor job of indexing the many regulations about Indians. Full-text searches in an electronic version of the WAC on the Internet (<http://lib.law.washington.edu/research/research.html#rules>), Westlaw, or LexisNexis are advisable. Or

carefully review all regulations of the agency you believe may be relevant. Chapter 3, Fundamentals of Legal Research in Washington, describes print and electronic sources for Washington regulations.

ii. Federal

As noted in Section IV.D.4 above, federal authority over Indians has been primarily delegated to the U.S. Department of the Interior, Bureau of Indian Affairs. The BIA has field offices called agencies.

The Puget Sound Agency (PSA) of the U.S. Bureau of Indian Affairs, <http://www.port.bia.gov/agencies/pugetsound/index.html>, provides services to fourteen federally recognized tribes in the area. Direct services and technical assistance in the areas of contracts administration, education, forestry, environmental issues, law enforcement, real estate services, roads, social services, and Tribal Government Services. Primary emphasis is on federal trust responsibilities and on the protection and enhancement of trust resources. The website is under construction and has little content at this point.

5. Directories and Reference Materials

The Tribal Directory prepared by the Governor's Office of Indian Affairs has an excellent list of organizations interested in Indian matters, <http://www.goia.wa.gov/directory/toc.html>.

The Seattle Indian Services Commission has published the *American Indian/Alaska Native Directory for Western Washington and the Puget Sound*. The most recent edition, 1997/98, includes individual, business, publication, cultural, and tribal contact information.

The Washington State Bar Association has an Indian Law Section, <http://www.wsba.org/indianlaw/default.htm>. The membership list is also printed in the annual *Resources*. Many members of the Washington bar work with Indian law issues on a regular basis, and many will be happy to share their expertise.

The Native American Law Center at the University of Washington School of Law began opera-

tion in 2000 under the leadership of Professor Robert Anderson, <http://www.law.washington.edu/IndianLaw/>.

An excellent work that profiles Indian reservations throughout the U.S. was edited by Veronica E. Velarde Tiller. *American Indian Reservations and Trust Areas* (U.S. Department of Commerce, Economic Development Administration, 1996) contains an excellent history of all tribes, http://www.doc.gov/eda/html/lg3_4indianres.htm and in print. Washington tribes are profiled on pages 577-608.

VII. Conclusion

Every lawyer in Washington needs to be aware of the complex web of laws and rules that govern transactions and dealings with individual Indians, Indian tribes, or Indian tribal organizations. The growth of Native American self-government will require that more practitioners understand how to find authorities that answer client questions.

¹ Thanks to Professor Robert Anderson for his careful review of and many corrections to this chapter. Peggy Roebuck Jarrett and Cheryl Nyberg also made very useful suggestions. Any errors are mine alone.

² Governor's Office of Indian Affairs, Frequently Asked Questions, at <http://www.goia.wa.gov/faq.html> (last visited Dec. 13, 2001).

³ U.S. Census Bureau, States Ranked by American Indian and Alaska Native Population, July 1, 1999, at <http://www.census.gov/population/estimates/state/rank/aiea.txt> (last visited Oct. 15, 2001).

⁴ U.S. Const. art. I, §8, cl. 3 gives Congress the authority "[t]o regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes." In addition, Article VI of the Constitution approved all treaties made and declared all existing and future treaties to be "the supreme Law of the Land." U.S. Const. art. VI.

⁵ Institute for Government Research, *The Problem of Indian Administration* (1928).

⁶ House Concurrent Resolution 108, 83rd Cong., 1st Sess., 67 Stat. B132 (1953).

⁷ Robert McCarthy, "Native Justice: A Look at Tribal Court Jurisdiction in Washington State," *Wash. St. B. News*, Aug. 1999, at 38, <http://www.wsba.org/barnews/1999/08/mccarthy.htm>.

⁸ A comprehensive list of tribal attorneys could not be located. However, contact information for tribes can be located easily. See Sections VI.E and VI.F.5 for possible sources.

Appendix I: Washington State Tribal Directory

WASHINGTON STATE FEDERALLY RECOGNIZED INDIAN TRIBES

CHEHALIS CONFEDERATED TRIBES

The Honorable David Youckton, Chair
Chehalis Business Council
PO Box 536
Oakville, WA 98568
(360) 273-5911/753-3213 FAX (360) 273-5914
County: *Grays Harbor/Thurston*

COLVILLE CONFEDERATED TRIBES

The Honorable Colleen Cawston, Chair
Colville Business Council
PO Box 150
Nespelem, WA 99155
(509) 634-4711 FAX (509) 634-4116
County: *Okanogan/Ferry*

HOH TRIBE

The Honorable Alvin Penn, Chair
Hoh Tribal Business Committee
2464 Lower Hoh Road
Forks, WA 98331
(360) 374-6582 FAX (360) 374-6549
County: *Jefferson*

JAMESTOWN S'KLALLAM TRIBE

The Honorable W. Ron Allen, Chair
Jamestown S'Klallam Indian Tribe
1033 Old Blyn Highway
Sequim, WA 98382
(360) 683-1109 FAX (360) 681-4643
County: *Clallam*

KALISPEL TRIBE

The Honorable Glen Nenema, Chair
Kalispele Business Committee
PO Box 39
Usk, WA 99180
(509) 445-1147 FAX (509) 445-1705
County: *Pend Oreille*

LOWER ELWHA KLALLAM TRIBE

The Honorable Russ Hepfer, Chair
Elwha Klallam Business Council
2851 Lower Elwha Road
Port Angeles, WA 98363
(360) 452-8471 FAX (360) 452-3428
County: *Clallam*

LUMMI NATION

The Honorable William E. Jones, Sr., Chair
Lummi Business Council
2616 Kwina Road
Bellingham, WA 98226-9298
County: *Whatcom*

MAKAH TRIBE

The Honorable Grieg Arnold, Chair
Makah Tribal Council
PO Box 115
Neah Bay, WA 98357
(360) 645-2201 FAX (360) 645-2788
County: *Clallam*

MUCKLESHOOT TRIBE

The Honorable John Daniels, Jr., Chair
Muckleshoot Tribal Council
39015 172nd Avenue SE
Auburn, WA 98092
(253) 939-3311 FAX (253) 939-5311
County: *King*

NISQUALLY TRIBE

The Honorable John Simmons, Chair
Nisqually Indian Tribe
4820 She-Nah-Num Drive SE
Olympia, WA 98513
(360) 456-5221 FAX (360) 407-0125
County: *Thurston*

NOOKSACK TRIBE

The Honorable Art George, Chair
Nooksack Indian Tribal Council
PO Box 157
Deming, WA 98244
(360) 592-5176 FAX (360) 592-5721
County: *Whatcom*

PORT GAMBLE S'KLALLAM TRIBE

The Honorable Ronald Charles, Chair
Port Gamble Business Committee
31912 Little Boston Road NE
Kingston, WA 98346
(360) 297-2646 FAX (360) 297-7097
County: *Kits*

PUYALLUP TRIBE

The Honorable Herman Dillion, Sr., Chair
Puyallup Tribal Council
2002 East 28th Street
Tacoma, WA 98404
(253) 573-7800 FAX (253) 573-7929
County: *Pierce*

QUILEUTE TRIBE

The Honorable Russell Woodruff, Sr., Chair
Quileute Tribal Council
PO Box 279
La Push, WA 98350
(360) 374-6163 FAX (360) 374-6311
County: *Clallam*

QUINULT NATION

The Honorable Pearl Capoeman-Baller, Chair
Quinault Business Committee
PO Box 189
Taholah, WA 98587
(360) 276-8211 FAX (360) 276-4191
County: *Grays Harbor*

SAMISH NATION

The Honorable Kenneth Hansen, Chair
Samish Tribe of Indians
PO Box 217
Anacortes, WA 98221
(360) 293-6404 FAX (360) 299-0790
County: *Skagit*

SAUK-SUIATTLE TRIBE

The Honorable Jason L. Joseph, Chair
Sauk-Suiattle Indian Tribe
5318 Chief Brown Lane
Darrington, WA 98241
(360) 436-0131 FAX (360) 436-1511
County: *Skagit*

SHOALWATER BAY TRIBE

The Honorable Herbert Whitish, Chair
Shoalwater Bay Tribal Council
PO Box 130
Tokeland, WA 98590
(360) 267-6766 FAX (360) 267-6778
County: *Pacific*

SKOKOMISH TRIBE

The Honorable Denny Hurtado, Chair
Skokomish Tribal Council
N. 80 Tribal Center Road
Shelton, WA 98584
(360) 426-4232 FAX (360) 877-5943
County: *Mason*

SNOQUALMIE TRIBE

The Honorable Joseph Mullen
Snoqualmie Tribe of Indians
PO Box 670
Fall City, WA 98024
(425) 222-6900 FAX (425) 222-7798
County: *King*

SPOKANE TRIBE

The Honorable Alfred Peone, Chair
Spokane Tribal Business Council
PO Box 100
Wellpinit, WA 99040
(509) 258-4581 FAX (509) 258-9243
County: *Stevens*

SQUAXIN ISLAND TRIBE

The Honorable David Lopeman, Chair
Squaxin Island Tribal Council
SE 70 Squaxin Lane
Shelton, WA 98584
(360) 426-9781 FAX (360) 426-6577
County: *Mason*

STILLAGUAMISH TRIBE

The Honorable Edward L. Goodridge, Sr.
Stillaguamish Board of Directors
3439 Stoluckquamish Lane
Arlington, WA 98223
(360) 652-7362 FAX (360) 435-7689
County: *Snohomish*

SUQUAMISH TRIBE

The Honorable Bennie J. Armstrong, Chair
Suquamish Tribal Council
PO Box 498
Suquamish, WA 98392
(360) 598-3311 FAX (360) 598-6295
County: *Kitsap*

SWINOMISH TRIBE

The Honorable Brian Cladoosby, Chair
Swinomish Indian Senate
PO Box 817
LaConner, WA 98257
(360) 466-3163 FAX (360) 466-5309
County: *Skagit*

TULALIP TRIBES

The Honorable Herman Williams, Jr., Chair
Tulalip Board of Directors
6700 Totem Beach Road
Marysville, WA 98270-9694
(360) 651-4000 FAX (360) 651-4032
County: *Snohomish*

UPPER SKAGIT TRIBE

The Honorable Marilyn Scott, Chair
Upper Skagit Tribal Council
25944 Community Plaza
Sedro Woolley, WA 98284
(360) 856-5501 FAX (360) 856-3175
County: *Skagit*

YAKAMA NATION

The Honorable Lonnie Selam Sr., Chair
Yakama Tribal Council
PO Box 151
Toppenish, WA 98948
(509) 865-5121 FAX (509) 865-5528
County: *Yakima/Klickitat*

NON-FEDERALLY RECOGNIZED INDIAN TRIBES

Note: Washington State does not have state-recognized tribes, as some states do. The following tribes are landless, non-federally recognized. Some are categorized as non-profit corporations; some are pending federal recognition. All have requested inclusion on this list.

CHINOOK TRIBE**

The Honorable Gary Johnson, Chair
Chinook Indian Tribe
Box 228
Chinook, WA 98614
Ph: 360/ 777-8303 Fax: 360/ 777-8100
County: *Pacific*

COWLITZ TRIBE**

The Honorable John Barnett, Chair
Cowlitz Indian Tribe
PO Box 2547
Longview, WA 98632-8594
Ph: 360/ 577-8140 Fax: 360/ 577-7432
Email: cowlitz@teleport.com
County: *Cowlitz*

DUWAMISH TRIBE**

The Honorable Cecile Hansen, Chair
Duwamish Tribe
14235 Ambaum Blvd SW
Burien, WA 98166-1464
Ph: 206 431-1582 Fax: 206/ 431-1962
Email: dts@eskimo.com
County: *King*

KIKIALLUS INDIAN NATION

The Honorable Douglas Paul Lavan, Chief
Kikiallus Indian Nation
3933 Bagley Avenue N.
Seattle, WA 98103
Ph: 206 632-2512
Email: eaglenat@aa.net
County: *King*

MARIETTA BAND OF NOOKSACK TRIBE

The Honorable Robert Davis, Jr., Chair
Marietta Band of Nooksack Indians
1827 Marine Drive
Bellingham, WA 98226
County: *Whatcom*

SNOHOMISH TRIBE

The Honorable William E. Matheson, Chair
Snohomish Tribe of Indians
144 Railroad Avenue, Suite 201
Edmonds, WA 98020
Ph: 425/ 744-1855 Fax: 425/ 744-1971 Email:
snohomish@seanet.com
County: *Snohomish*

SNOQUALMOO TRIBE

Snoqualmoo Tribe of Indians
PO Box 463
Coupeville, WA 98239
County: *Island*

STEILACOOM TRIBE

The Honorable Joan K. Ortez, Chair
Steilacoom Indian Tribe
PO Box 88419
Steilacoom, WA 98388
Ph: 253/ 584-6308 Fax: 253/ 584-0224
County: *Pierce*

***Pending Federal Recognition*

Appendix II: Basic Rules of Jurisdiction in Indian Country (Criminal)

CHARACTER OF LAND ON WHICH OFFENSE WAS COMMITTED				
WHO COMMITTED THE OFFENSE		Trust Property**	Fee Simple Property**	Public Road
	Indian Defendant	<p>State jurisdiction exists for all crimes committed by an Indian juvenile. State jurisdiction exists for all crimes committed by an Indian adult on trust land located outside the geographic boundaries of the reservation.</p> <p>Federal jurisdiction exists for all crimes committed by an Indian adult. Federal jurisdiction also exists for all crimes committed by an Indian juvenile in the Jamestown-Klallam Reservation, the Nooksack Reservation, the Sauk Suiattle Reservation, and the Upper Skagit Reservation.</p> <p>Tribal court jurisdiction exists for all offenses committed by an Indian adult or Indian juvenile on trust land.</p>	<p>State jurisdiction exists for all offenses committed by an Indian adult or Indian juvenile.</p> <p>Tribal court jurisdiction exists for all offenses committed by an Indian adult or Indian juvenile on fee simple property located within the exterior boundary of the reservation.</p>	<p>State jurisdiction exists for all crimes committed on a state, city, or county road by an Indian adult or Indian juvenile. A civil traffic infraction may only be issued if the Tribe does not have a comprehensive traffic code. If the Tribe has a comprehensive traffic code, then a report should be forwarded to the tribal prosecutor for any action the Tribe should wish to take.</p> <p>Tribal court jurisdiction exists for all offenses committed by an Indian adult or Indian juvenile on public roads located within the exterior boundary of the reservation.</p>
	Non-Indian Defendant	<p>State court jurisdiction exists for all crimes committed by non-Indian adults and non-Indian juveniles.</p> <p>No tribal court jurisdiction over a non-Indian. Tribal officers may detain non-Indian law breakers until a state officer can report to the scene.</p>	<p>State court jurisdiction exists for all crimes committed by non-Indian adults and non-Indian juveniles.</p> <p>No tribal court jurisdiction over a non-Indian. Tribal officers may detain non-Indian law breakers until a state officer can report to the scene.</p>	<p>State court jurisdiction exists for all crimes and civil infractions committed by non-Indian adults and non-Indian juveniles.</p> <p>No tribal court jurisdiction over a non-Indian. Tribal officers may detain non-Indians who have committed a crime until a State commissioned officer can report to the scene.</p>

*Under these rules, more than one entity (*i.e.* Tribal and State) may have jurisdiction over a particular individual and crime at the same time. Also, these rules do not apply to some reservations.

No State jurisdiction exists over Indian adults or Indian juveniles anywhere in the Jamestown-Klallam Reservation, the Nooksack Reservation, the Sauk Suiattle Reservation, and the Upper Skagit Reservation.

State jurisdiction over Indian adults or Indian juveniles exists anywhere in the Muckleshoot Reservation, the Nisqually Reservation, the Skokomish Reservation, the Stillaguamish Reservation, and the Squaxin Island Reservation.

** The easiest way to determine whether a piece of property is fee or trust is to contact the county auditor. Trust property is exempt from taxes and the records will reflect that. Tulalip Reservation has a special class of fee property that is subject to the same rules as trust property.

Prepared by the Washington Association of Prosecuting Attorneys (February 2005)

ARREST WARRANTS

	TRUST PROPERTY WITHIN RESERVATION	FEE SIMPLE PROPERTY WITHIN RESERVATION	PROPERTY OUTSIDE RESERVATION
TRIBAL COURT	State officers may not serve tribal court arrest warrants on Indians or non-Indians.	State officers may not serve tribal court arrest warrants on Indians or non-Indians.	State officers may not serve tribal court arrest warrants on Indians or non-Indians.
STATE COURT	State officers may serve arrest warrants upon non-Indians or Indians in accordance with normal procedures if the warrant is related to an off-reservation violation of state laws or to a crime committed within the reservation at a location where the state exercises criminal jurisdiction. If the subject of the warrant is an Indian who is currently in tribal custody, the State may have to follow the extradition procedure established by the Tribe to obtain custody of the individual.	State officers may serve arrest warrants upon non-Indians or Indians in accordance with normal procedures.	State officers may serve arrest warrants upon non-Indians or Indians in accordance with normal procedures regardless of whether the property is owned in fee or trust.

SEARCH WARRANTS

	TRUST PROPERTY WITHIN RESERVATION	FEE SIMPLE PROPERTY WITHIN RESERVATION	PROPERTY OUTSIDE RESERVATION
TRIBAL COURT	State officers may not assist in the service of a tribal search warrant. State officers may respond to the scene to take into custody any non-Indians who are found on site and who were found to be engaged in a violation of state law.	State officers may not assist in the service of a tribal search warrant. State officers may assist tribal officers in obtaining a parallel state court search warrant and state officers may serve such a warrant. State officers may respond to the scene to take into custody any non-Indians who are found on site and who were found to be engaged in a violation of state law.	State officers may not assist in the service of a tribal search warrant. State officers may assist tribal officers in obtaining a parallel state court search warrant and state officers may serve the parallel state court warrant.
STATE COURT	State officers may serve state search warrants without obtaining a parallel tribal search warrant or a federal search warrant if the warrant is related to an off-reservation violation of state laws or to a crime committed within the reservation at a location where the state exercises criminal jurisdiction.	State officers may serve state search warrants without obtaining a parallel tribal search warrant or a federal search warrant.	State officers may serve state search warrants on all property located outside the exterior boundary of a reservation regardless of whether the property is owned in fee or trust, by an Indian or a non-Indian.